

EXHIBIT 85

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:
§
§ Chapter 11
HIGHLAND CAPITAL MANAGEMENT,
§
§ Case No. 19-34054-sgj11
L.P.,
§
§
Debtor.

**SECOND AMENDED RESPONSE OF DUGABOY INVESTMENT TRUST
TO ORDER REQUIRING DISCLOSURES**

COMES NOW Dugaboy Investment Trust (“Dugaboy”) and files this response of Dugaboy Investment Trust to *Order Requiring Disclosures* [Dkt. # 2460] (the “Order”), entered by the Court *sua sponte* in the above styled and numbered Chapter 11 bankruptcy case (the “Bankruptcy Case”) of Highland Capital Management, L.P. (the “Debtor”), respectfully stating as follows:

I. RESPONSE

1. The Court has entered an order requiring Dugaboy to make certain disclosures relative to its standing in connection with the above captioned matter. The Court has already



ruled on a number of matters before this Court that Dugaboy has possessed the requisite standing on matters that it has taken a position or filed a support pleading.

2. Dugaboy is named as a “Related Entity” and is enjoined by the Debtor’s *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified)* (the “Plan”). See Dkt. No. 1811-9 at p. 19. As an enjoined party, Dugaboy has standing to seek relief from the Plan. See, e.g., *Samnorwood Independ. Sch. Dist. v. Tex. Educ. Agency*, 533 F.3d 258, 265 (5th Cir. 2008) (“a third party had standing to appeal an injunction which adversely affects its interest, even when it was not a party to the litigation”).

3. Dugaboy is a named defendant in the matter styled *Official Committee of Unsecured Creditors vs. CLO Holdco, Ltd., Charitable DAF Holdco, Ltd., Charitable DAF Fund, LP, Highland Dallas Foundation, Inc., The Dugaboy Investment Trust, Grant James Scott III in his individual capacity, as Trustee of The Dugaboy Investment Trust, and as Trustee of The Get Good Nonexempt Trust, and James D. Dondero* (Case No. 20-03195) and has been advised that it will be added as a defendant in an additional adversary proceeding to be filed going forward. In the adversary proceeding where Dugaboy is named as a defendant the standing of Dugaboy is not at issue. What will be at issue in those cases is whether Dugaboy should be a named party and whether the Plaintiff in those cases has asserted a recognizable cause of action against Dugaboy.

4. Further, Dugaboy has standing based upon the proofs of claim that it filed in this bankruptcy case. Although the Debtor has challenged Dugaboy’s claims, it has the right to assert the claims and participate in these bankruptcy proceedings as a party in interest.

II. DISCLOSURES

5. Dugaboy is a Delaware Trust. As a Trust, it has no owners, rather, beneficiaries and a trustee. Distributions out of the Trust and the decisions made on behalf of the Trust are governed by the Trust documents. The Trust Agreement is dated October 2010 and it is styled "Trust Agreement between Dana Scott Breault, Settlor and James D. Dondero and Commonwealth Trust Company, Trustees."

6. The Trust has three (3) trustees each with a different function. The Trust creates an Administrative Trustee, a Family Trustee and an Independent Trustee. The initial Trustees were Commonwealth Trust Company as Administrative Trustee, James D. Dondero as Family Trustee and Grant Scott as Independent Trust. The current Family Trustee is Nancy Dondero, the sister of James D. Dondero.

7. The Trust Agreement creates three (3) separate trusts under the Dugaboy Investment Trust. The first is for the benefit of James D. Dondero, the second is for children and the third is for descendants.

8. The Trust owns an 0.1866% Class A interest in the Debtor and has filed proofs claim numbered 113, 131, and 177.

9. Proof of Claim No. 177 is an administrative proof of claim for the mismanagement of certain funds by the Debtor.

10. Proof of Claim No. 113 relates to the Debtor's 2008 tax return, which is currently being audited, which audit may result in the Debtor being liable to its limited partners, including Dugaboy. Proof of Claim No. 113 also relates to the Debtor's failure to make certain tax distributions to the limited partners, including Dugaboy, from 2004 through 2018. The amount of this claim is uncertain, but Dugaboy has requested certain information from the Debtor in order

to calculate a precise amount. Dugaboy obtained its status as a limited partner in the Debtor through its status as successor-in-interest to the Canis Major Trust.

11. Lastly, Proof of Claim 131 relates to two Master Securities Lending Agreements that Dugaboy entered into with Highland Select Equity Master Fund in 2014 and 2015. Dugaboy made various loans to Highland Select in the form of 2,015,000 shares of NexPoint Credit Strategies Fund valued at \$20,270,900. Dugaboy made various other loans in 2015. The Master Securities Lending Agreements were mostly terminated in July 2019. Pursuant to the Termination of Loan, Select and Dugaboy agreed to terminate the 2015 MSLA and partially terminate the 2014 MSLA such that a large number of the loaned securities remained due and owing to Dugaboy under the Loan Agreements.

12. From 2015 until the termination of the Loan Agreements in 2019, Select and/or the Debtor made numerous repayments of the securities loaned by Dugaboy. However, a substantial number of the loaned securities have not been repaid and remain outstanding.

13. As of the Petition Date, Dugaboy has not been repaid the outstanding shares and is owed repayment of the loaned securities or the cash value of the loaned securities, plus accrued interest, in the amount of \$12,041,438. A summary of the loan account is attached as Exhibit B to the *Response of the Dugaboy Investment Trust to the Debtor's First Omnibus Objection to Certain Proofs of Claim* [Dkt. No. 1153].

14. The gist of Dugaboy's claim is premised on the fact that the Debtor was general partner or *de facto* general partner of Highland Select and directed that the loaned funds be used for the sole benefit of the Debtor, thereby obligating the Debtor on the loans.

15. Objections are pending to each of the proofs of claim that have been filed.

16. In addition, Dugaboy is the maker of a note held by the Debtor that is the subject of the Creditors' Committee Adversary Proceeding.

July 9, 2021.

Respectfully submitted,

/s/Douglas S. Draper.

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CERTIFICATE OF SERVICE

I, Douglas S. Draper, counsel for The Dugaboy Investment Trust, do hereby certify that I caused a copy of the above and foregoing to be served on **July 9, 2021**, via the Court's ECF Notification System as follows:

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